Tan Eng Khiam v Ultra Realty Pte Ltd

HIGH COURT (SINGAPORE) — SUIT NO 1729 OF 1990
SELVAM JC
10 MAY 1991

Land Law — Adverse possession for 30 years — Effect of conversion of land to Land Titles prior to documentation — Whether defeated by registration of mortgage and reassertion of ownership — Land Titles Act (Cap 157, 1985 Ed), ss 16, 17, 19, 20, 21, 42 & 44 — Limitation Act (Cap 163, 1985 Ed), ss 9 & 18

Civil Procedure — Striking out — Rules of the Supreme Court 1970, O 18 r 19

This is an appeal from the registrar's decision striking out the plaintiff, Tan Eng Khiam's ('TEK') claim for adverse possession. TEK and the defendants, Ultra Realty Pte Ltd ('UR') are owners of continuous pieces of land at Katong. TEK claimed that about 30 years ago, he erected a wall which encroached on UR's land. No action was, however, taken with regards to the adverse possession of land. In October 1988, UR purchased their land and discovered, following a land survey, that TEK's wall was encroaching on their land. UR through their solicitors wrote to TEK, giving him notice of encroachment and asking for a correction of the boundary line.

About six months later, TEK through his solicitors claimed adverse possession of UR's property. In the meantime, UR's land had been brought under the Land Titles Act (Cap 157, 1985 Ed) ('the Act') and a mortgage to Citibank NA and a notice of reassertion of ownership had been registered on 15 March 1990 and 27 September 1990 respectively. TEK commenced this action on 16 January 1991. Subsequently, TEK lodged a caveat claiming his interest by way of adverse possession. UR disputed TEK's claim on the ground that TEK was precluded from asserting his title by adverse possession. UR argued that under ss 42(1) and 44 of the Act, a person in adverse possession of registered land should apply to the Registrar of Land Titles for a certificate of title provided that not less than 12 years have elapsed since the land was brought under the Act or since the last entry in the register recording a transaction in respect of the land, but that TEK's right was defeated when the registration of mortgage and the reassertion of ownership were filed. This argument was accepted by the registrar who accordingly ordered TEK's claim to be struck out on the ground that it had no merit, but in the appeal before the judge, TEK argued that as UR's title under the Act was qualified, until the lapse of five years after the land was brought under the Act, TEK could during that period, protect his possessory title by lodging a caveat, which he had done.

Held, allowing the appeal:

(1) The ultimate aim of the Act is to provide a system of registration of title where indefeasible titles are held. One of the methods by which this is achieved is by issuing qualified titles when land is brought under the provisions of the Act. A qualified title carries a caution so that, so long as the caution remains, the land is held subject to any interest which affected the land at the date of issue of the qualified certificate of title.

(2) The interest of a purchaser of land with a qualified title can accordingly, during the period when the title is qualified, be defeated by or subordinated to any interest which was not discovered by investigation of title deeds and inspection of the land prior to completion of the purchase.

(3) An interest in land acquired by adverse possession while the land was unregistered survives its conversion to registered land for a period of five years from the date of issue of a qualified certificate of title and during this period, the adverse possessor may protect his interest by lodging a caveat, failing which he forfeits his interest.

(4) Courts are reluctant to strike out a claim summarily either under O 18 r 19 of the Rules of the Supreme Court 1970 or inherent jurisdiction. Whenever possible, the courts will let the plaintiff proceed with the action unless his case is wholly and clearly unarguable.

Cases referred to

1 *Blue Town Investments Ltd* v *Higgs & Hill plc* [1990] 1 WLR 696; [1990] 2 All ER 897 (refd)
2 *Oxy Electric Ltd* v *Zainuddin* [1991] 1 WLR 115; [1990] 2 All ER 902 (refd)

Legislation referred to

Land Titles Act (Cap 157, 1985 Ed) ss 13, 16, 17, 19(1), (2), (3), 20(2), 21, 42(1), (3), 44
Limitation Act (Cap 163, 1985 Ed) ss 9, 18
Rules of the Supreme Court 1970 O 18 r 19

Cheng Tim Pin for the plaintiff/appellant.
Shriniwas Rai for the defendants/respondents.

Cur Adv Vult

Selvam JC: The main question for determination before this court is: what is the position of an adverse possessor of unregistered land after its conversion to registered land? It involves the consideration of the interaction of three statutes: the Limitation Act (Cap 163, 1985 Ed), the Registration of Deeds Act (Cap 269, 1989 Ed) and the Land Titles Act (Cap 157, 1985 Ed).

The plaintiff and the defendants are owners of contiguous pieces of land at Katong in the district of Geylang.

The plaintiff claims that some 30 years ago he erected a wall which encroached upon the defendants' land. The wall has stood there all these years. For the purpose of deciding the issue before this court it is assumed by the court that the plaintiff had taken adverse possession of that part of the defendants' land in question.

Under ss 9 and 18 of the Limitation Act, if no action is brought within 12 years of any land being taken in adverse possession the right and title to the land is extinguished in favour of the adverse possessor. If the plaintiff's claim is correct, he would have acquired an estate in fee simple to the land in question. The plaintiff, however, did nothing to document his possessory title.

The defendants purchased their property in October 1988 when it was unregistered land. Then, following a land survey, they discovered that the plaintiff's wall was on their property. In March 1990, the defendants' solicitors wrote to the plaintiff giving him notice of the encroachment and asked for the boundary line to

be shifted to its true place. The plaintiff, almost six months later, replied through his solicitors that he had been in adverse possession of the defendants' property. The defendants insisted that 'whoever developed his land first will have to realign the wall on its true boundary'. It was plain that the defendants would develop their property first and would attempt to 'realign the wall on its true boundary'.

The plaintiff then filed a writ claiming a declaration that the defendants were not entitled to demolish the wall as the plaintiff was entitled to possession of the land delineated by the wall. He also claimed an injunction to restrain the demolition of the wall. An interim injunction has been granted.

The defendants applied to strike out the plaintiff's claim on the grounds that it (a) disclosed no reasonable cause of action; (b) was scandalous, frivolous or vexatious; or (c) was an abuse of the process of the court. The defendants relied on the provisions of the Land Titles Act (Cap 157, 1985 Ed) ('the Act').

The defendants invoked the Act because, following the purchase of their property in October 1988, their land was brought under the provisions of the Act. This was done by the issue of a qualified certificate of title on 25 May 1989. This changed the character of the land to registered land.

The defendants' title was qualified in that their estate was expressly subject to:

(a) any subsisting exceptions, reservations, covenants and conditions contained or implied in the title granted; and
(b) the encumbrances and other interests registered or notified in the land register created under the Act.

There appeared in the land register a mortgage granted by the defendants to Citibank NA and registered on 15 March 1990 and a reassertion of ownership over the land by the defendants on 27 September 1990.

On 16 January 1991, the plaintiff lodged a caveat claiming that he was 'seized of an estate of freehold in possession and entitled to an estate in fee simple therein'. The caveat purported to prohibit the registration of any instrument affecting the land.

The defendants based their argument on ss 42(1) and 44 of the Act. They read as follows:

> 42(1) Any person in adverse possession of registered land who, if that land had not been brought under the provisions of this Act would have become entitled thereto by virtue of that adverse possession, may apply to the Registrar for a certificate of title to that land, provided that not less than 12 years have elapsed since the land was brought under the provisions of this Act, or since the entry in the land-register of the most recent memorial of registration or notification of an instrument (other than an instrument of statutory obligation) affecting the land.
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> 44(1) A proprietor of an interest in registered land who believes or fears that that land is in adverse possession may lodge with the Registrar a reassertion of his ownership of that interest, and the Registrar shall enter in the land-register a notification of the reassertion.
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> (2) An entry pursuant to this section is a notification within the meaning of section 42.
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> (3) Such a notification shall not be entered while there is pending in the Land Titles Registry an application for a possessory title to that land.

The thrust and substance of the defendants' argument was that as the Citibank mortgage was filed on 15 March 1990 and a reassertion of ownership was filed on 27 September 1990, the plaintiff was precluded from asserting his title by adverse possession.

The plaintiff's argument before this court was that the defendants' title was qualified and that it must remain so for five years. He was at liberty to assert his possessory title at anytime during the five-year period. He further argued that he could protect his possessory title by lodging a caveat at any time during that period. The plaintiff contended that by filing a caveat pursuant to s 42(3) of the Act he fully protected his interest.

The registrar who heard the defendants' application accepted their contention that the plaintiff's claim had no merit and struck out the action. Unfortunately, the plaintiff failed to articulate before the registrar the arguments placed before this court. The plaintiff has appealed to this court against the registrar's decision.

Legal status of qualified certificate of title

To test the arguments of the parties, it is necessary to appreciate the distinction between registered and unregistered land. The distinction is stated succinctly in *The Law of Real Property* by RF Meggary and HWR Wade (4th Ed) at pp 1054-1055:

> The prime object of registration of title is to substitute a single established title, guaranteed by the State, in place of the traditional title which must be separately investigated on every purchase. In the case of unregistered land, a purchaser must satisfy himself from the abstract of title, the deeds, his requisitions on title, his searches and his inspection of the land that the vendor has power to sell the land and that it is subject to no undisclosed incumbrances; and this investigation must be repeated in full by every subsequent purchaser. This repetitive examination of the same title is eliminated in the case of registered land; the purchaser can discover from the mere inspection of the register whether the vendor has power to sell the land and about many important incumbrances; certain other incumbrances must be investigated in much the same way as in the case of unregistered land.

The ultimate aim of the Act is to provide a system of registration of titles and issue indefeasible titles to all registered land. In broad terms this is to be achieved by two methods: (i) by issuing clean certificates of title

upon fresh grant of land by the State and (ii) by issuing qualified certificates of title when land is brought under the provisions of the Act. A qualified certificate of title may be issued under s 16 or s 17 of the Act. A qualified certificate of title carries the caution that the land comprised in it is held subject to any interest which affected it at the date of issue of the qualified certificate of title. So long as the caution remains the land is so held: see s 19(1) of the Act.

A caution is valid for five years from the date of the issue of the qualified certificate of title. When the caution lapses at the expiration of the five-year period, the certificate of title ceases to be qualified and the land thenceforth is held subject only to such interests as are registered or notified in the land register: see s 19(2) and (3) of the Act.

While a title subsists under a qualified certificate carrying the caution stated above, any person claiming an interest in land existent at the date of the issue of the qualified certificate of title may protect that interest by lodging a caveat to be entered in the land register: see s 20(2) of the Act.

Section 21 of the Act provides that publicity be given of all qualified certificates of title and make them available for inspection by the public. The purpose of the provision is, of course, to facilitate the notification of all subsisting interests so that they can be entered in the land-register pursuant to s 20(2) of the Act.

It is the view of this court that, during the transition period, the proprietor holds a registered title in form but traditional in substance. The purchaser of land who receives a qualified title must accordingly live in limbo so long as the registered title remains qualified. During that time his interest can be defeated by or subordinated to any interest which was not discovered by investigation of title deeds and inspection of the land before the completion of the purchase. Plainly, the policy of the law is to give notice and opportunity to unregistered interest holders to register the same and not defeat such interest by reason of the conversion.

The conclusion to be made from the foregoing is that an interest in land acquired by adverse possession while the land was unregistered survives its conversion to registered land for a period of five years from the date of issue of a qualified certificate of title. Further, if the adverse possessor does not protect his interest by lodging a caveat within a period of five years from the issue of a qualified title he forfeits his interest.

The views expressed above are supported by *The Singapore Torrens System* by John Balman. At p 36 he states:

> So long as a caution remains, any common law interest created before the issue of the qualified certificate of title will prevail against the proprietor for the time being, whether he is the original or a derivative proprietor. After a lapsing has been notified, the title becomes clear of all common law interests which were not then notified on the folium of the land-register. It is therefore to the advantage of every purchaser of land in a qualified title, to apply for a notification of lapsing at the earliest possible moment.

At p 99, he states the position more specifically:

> A person in adverse possession of land at the time when a qualified certificate of title issues, continues to have the same rights as he would otherwise have had, provided that he protects his rights by entering a caveat within five years of the issuing of the qualified certificate of title. If he does not enter a caveat within that time, his rights become the same as those of a trespasser who goes into adverse possession of registered land.

Adverse possession under the Act

Section 42(2) of the Act states that, except as provided in ss 42 to 45 of the Act,

> ... no title to the land adverse to or in derogation of the title of a proprietor shall be acquired by any length of possession by virtue of the Limitation Act or otherwise, nor shall the title of any proprietor be extinguished by the operation of that Act.

Title to land by adverse possession is recognized by the Act in four distinct situations:

Firstly: When any person who by adverse possession claims to be owner of unregistered land lodges a primary application and such claim is accepted by the Registrar of Titles appointed pursuant to the Act.

Secondly: When adverse possession commenced after the land was bought under the Act. In such case time will stop running at the time of the entry in the land-register of a memorial or reassertion of ownership by its proprietor pursuant to s 44(1) of the Act.

Thirdly: When adverse possession commenced before the land became registered land but the 12-year period has not run out at the time of conversion of such land to registered land.

Fourthly: When adverse possession commenced and the 12-year period elapsed before the land was brought under the provisions of the Act.

The first and second possibilities are permitted by s 13 and s 42 of the Act respectively. The third and fourth are expressly recognized by s 42(3) of the Act. However, the second and third possibilities are subject to be defeated by the registration of a memorial or reassertion of title while the right to possessory title remains inchoate. In the last instance, the adverse possessor must protect his interest by the lodgment of a caveat within five years of the issue of qualified certificate of title.

The defendants' application

The defendant's application to strike out the plaintiff's claim must be considered in light of the foregoing analy-

sis of the Act and the established principles applicable to strike out an action under O 18 r 19 of the Rules of the Supreme Court 1970 ('the RSC').

A cause of action is a claim based on a legal entitlement or the violation of a legal right. The assertion of a claim must set out all the essential acts to support the claim. If a purported claim does not comply with these criteria or the statement of claim on its face shows that it is not sustainable, a defendant may apply to strike out the statement of claim on the ground that it does not disclose a reasonable cause of action. No affidavit can be filed in support of such application because it is essentially a question of law and the pleaded facts are presumed to be true in favour of the claimant: see RSC O 18 r 19(2).

On the other hand, where the claim is stated to be invented or its prosecution fated to be futile and fruitless, the application should be founded on the other grounds. In that case facts are everything. An affidavit of facts in support of such grounds must be filed.

Courts are reluctant to strike out a claim summarily either under O 18 r 19 of the RSC or the inherent jurisdiction. This is anchored on the judicial policy to afford a litigant the right to institute a bona fide claim before the courts and to prosecute it in the usual way. Whenever possible the courts will let the plaintiff proceed with the action unless his case is wholly and clearly unarguable: see *Blue Town Investments Ltd* v *Higgs & Hill plc*[1] and *Oxy Electric Ltd* v *Zainuddin.*[2]

In this case the plaintiff based his claim on a legal entitlement to adverse possession. That clearly is a reasonable cause of action recognized by law. There is nothing on the face of the statement of claim which disentitled the plaintiff from asserting his claim.

The analysis of the relevant provisions of the Act and the facts before the court clearly show that the plaintiff has an arguable case. The final event may well be that the defendants' case is unarguable.

In the circumstances, the defendants' application to strike out the claim must fail. The action should accordingly be permitted to proceed in the usual way.

The plaintiff will have the costs of the appeal fixed at $5,000. As the arguments placed before this court were not articulated before the registrar, there will be no order as to costs in respect of the hearing below.

Appeal allowed.

Solicitors: *Yap & Yap; Hin Rai & Tan.*

Reported by *Rosalind Tan*

Hilti Far East Pte Ltd v Tan Hup Guan

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 1327 OF 1990
CHAN SEK KEONG J
23 APRIL 1991

Personal Property — Ownership — Motor car purchased by employer but registered in the name of employee — Employee refusing to return motor car — Whether ownership remained with employee

Tort — Detinue — Motor car purchased by company in the name of employee — Employee refusing to return motor car — Whether owners entitled to immediate ownership

The defendant was an employee of the plaintiffs. As a term of his employment he was entitled to a motor car. The plaintiffs purchased a motor car and registered it in the name of the defendant who signed a declaration of trust in favour of the plaintiffs. On 2 October 1990, the defendant was dismissed from the employ of the plaintiffs. When asked to return the motor car, he refused. The plaintiffs took out an action for a declaration that they were the beneficial owners of the motor car and for an order that the defendant deliver up the said motor car.

Held, allowing the application:

(1) Although the plaintiffs had claimed a declaration of trust, it was not a trust which gave them a right to possession of the said car. The said trust, in terms, did not oblige the defendant to deliver up possession of the said motor car to the plaintiffs. It only obliged him to effect the transfer of the said car. The defendant did not own the car and the registration in his name did not make him the owner at law.

(2) The legal title to the said car passed to the plaintiffs when they bought it. They had given possession of the said car to the defendant and registered it in his name for a specific purpose, with no intention whatever of transferring legal or beneficial ownership thereof to the defendant. As owners, the plaintiffs were entitled to immediate possession of the said car upon the defendant ceasing employment with them.

Cases referred to

1 *Holman* v *Johnson* [1775-1802] All ER 98 (refd)
2 *Palaniappa Chettiar* v *Arunasalam Chettiar* [1962] MLJ 143 (refd)
3 *Suntoso Jacob* v *Kong Miao Ming & Anor* [1984] 2 MLJ 95; [1986] 2 MLJ 170 (distd)
4 *Sajan Singh* v *Sardara Ali* [1960] MLJ 52 (folld)

Legislation referred to

Road Traffic Act (Cap 276, 1985 Ed) ss 10, 11
Motor Vehicles (Registration and Licensing) Rules 1972 rr 2, 3, 5, 6, 7, 8, 20, 25, 27

Abdul Rashid (*Anita Fam* with him) for the plaintiffs.
Rai Shriniwas for the defendant.

Cur Adv Vult

Chan Sek Keong J: The defendant was employed by the plaintiffs. As a term of his employment, he was provided with a motor car ('the said car') which the plaintiffs purchased on 2 January 1990 and had it registered in the name of the defendant. The plaintiffs paid the initial registration fee, the insurance premium and